***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION No: 1268 of 2005

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% 17.03.2005

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Between:

M/s Shiva Shankara Theatre, 16-1-485, Saidabad, Hyderabad,
represented by its Managing Partner Sri M.Chandraiah, S/o.Late Sayanna.

..... PETITIONER

AND

The Commissioner of Police, Hyderabad City, Hyderabad.

.....RESPONDENT

! Counsel for the Petitioner: MR.K.G.KRISHNA MURTHY

^ COUNSEL FOR THE RESPONDENTS: G.P. for Home

< Gist:

> Head Note:

? CITATIONS:

[1] 1995 (1) ALD 1 (F.B.)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1268 of 2005

Between:

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..... PETITIONER

AND

The Commissioner of Police, Hyderabad City, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ in the nature of a writ of Mandamus or any other writ, direction or order declaring Memos No.L&O/A3/1709/2004, dt.25.11.2004 and 30.12.2004 of the Commissioner of Police, the respondent herein, as illegal and void and direct the respondent herein to grant NOC, construction permission and B-Form Licence to the Petitioner and pass such other or orders.

Counsel for the Petitioner:MR.K.G.KRISHNA MURTHY

Counsel for the Respondent No.: GP FOR HOME

The Court made the following :

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.No.1268 of 2005

JUDGMENT:

The petitioner is a partnership concern. It intended to construct a cinema theatre in a site of 1742 sq.yards in Sy.No.224/1 and 2, Saidabad, Hyderabad. As required under the A.P. Cinemas (Regulation) Act, 1955 (for short the "Cinemas Regulation") and the A.P. Cinemas (Regulation) Rules, 1970
(for short "the Rules"), the petitioner submitted an application on 31-10-2003, to the respondent, Commissioner of Police, Hyderabad. On receipt of the same, the respondent issued a memo dated
11-11-2003, stating that, No Objection Certificate (for short "NOC"), for construction of the theatre, cannot be issued, on account of absence of proof of ownership over

the property. 60 days time was given for the petitioner to comply with the requirement. Thereafter, the petitioner obtained a registered sale deed dated 29-12-2003, in respect of the property ,and filed it before the respondent.

2. The application of the petitioner was processed and remarks were called for, from the various authorities. Correspondence ensued between various authorities and the petitioner in this regard. Ultimately, through memo dated 25-11-2004, the respondent informed the petitioner that submission of common application for NOC under Rule 8-A, and for permission to construct the theatre, under Rule 9-A of the Rules, is impermissible. Exception was taken for the act of the petitioner, in proceeding with the construction. The petitioner was directed to make fresh applications for NOC, under Rule 8-A, and to seek construction permission under Rule 9-A, thereafter. The petitioner submitted representations dated 01-12-2004 and 02-12-2004, narrating the developments that have taken place ever since the submission of the application on 31-10-2003, and requested the respondent to consider the feasibility of according screening permission, on completion of the construction. Respondent issued memo dated 30-12-2004, reiterating the earlier stand and directing the petitioner not to proceed with the construction. The petitioner challenges the two memos dated
25-11-2004 and 30-12-2004, issued by the respondent.

3. Petitioner contends that the same Form is prescribed under the Rules for submission of applications under Rules 8-A and 9-A, having regard to the similarity of the considerations, and that the respondent himself processed the same, up to a very advanced stage. It is also their case that the various authorities prescribed under the Rules, have intimated their no objection for the construction of the theatre and the minor objections raised by some of the authorities have been complied with. It is urged that the construction of the theatre is almost complete, and that it conforms to the requirement under the Rules. It is alleged that the construction is at the stage of finishing works, and no useful purpose would be served, if the applications are required to be made afresh.

4. The respondent filed counter affidavit. It is stated that submission of common application by the petitioner seeking permission under Rules 8-A and 9-A, is contrary to the scheme of the Rules, and in that view of the matter, no exception can be taken to the impugned memos. Reference is made to the various provisions of the Rules, as well as the writ petitions filed by the petitioner. It is contended that the

petitioner was required through the impugned memos, just to conform to the Rules, and it is not subjected to any hardship.

5. Sri E. Manohar, learned Senior Counsel appearing for the petitioner submits that though the stages, for grant of NOC, on the one hand, and the construction permission, on the other hand, are different; for all practical purposes, they are the different facets of the same process. He submits that it is on account of the similarity in both these matters, that a common Form is prescribed for making application. He also contends that the respondent did not raise any objection when a common application under Rules 8-A and
9-A, was made and in fact, the application was processed to substantial extent. He submits that it is not at all in the interest of anyone, to ignore the construction, which has already come up, in accordance with the Rules. He urges that the respondent can verify and ensure the conformity with the requirements under the Rules and further process the pending application even at this stage.

6. Learned Government Pleader for Home, on the other hand, submits that the purpose of and considerations for an application under Rule 8-A, for grant of NOC, are substantially different from those, in relation to an application under Rule 9-A, for grant of construction permission. He submits that the intimation by the respondent, as to the absence of proper title in the petitioner, cannot, by itself, confer any right, nor does it amount to processing of the common application, which was otherwise untenable in law. He submits that the respondent had every right to ensure the compliance with the Rules by issuing the impugned memos.

7. The construction of cinema theatres and the exhibition of films therein, is governed by the provisions of the Act and the Rules. Broadly stated, the scheme under the Act and Rules, contemplate three stages, in the matter of grant of permissions to theatres. The first stage is, issuance of NOC, for construction of a cinema theatre, under Rule 8-A. The procedure for this purpose is prescribed under Rule 8-B. The emphasis and consideration, at this stage, is focused mostly on the location of the site, with reference to the land use, surroundings and the thorough-fares, which the site abuts; and the proof of ownership of the site. Once an NOC is issued, on being satisfied about these aspects, necessary remarks are required to be called for, from the local authorities, i.e. Director of Town Planning, Heath and Police authorities etc.

8. The second stage is, the grant of permission to construct cinema theatre building, under Rule 9-A. The applicant is required to submit the detailed plans, ensuring compliance with sub-rule (2) thereof. On being satisfied that the proposed cinema building accords with the requirements under the Act and Rules, particularly those under appendix-I, of the Rules, the licensing authority can grant permission. Once the construction of cinema building is completed in accordance with the requirements and to the satisfaction of the licensing authority, the licence to exhibit the films is to be granted under Rule 11-A. Rule 12-A provides for renewal of the exhibition of licence. Form A-I, is prescribed for submission of applications under Rules 8-A and 9-A, and Form A-II is prescribed for the submission of applications under Rules 11-A and 12-A.

9. The petitioner submitted its application on 31-10-2003. The petitioner applied for grant of NOC, under Rule 8-A, and for grant of construction permission under Rule 9-A, through his common application. If the respondent was of the view that such a common application is impermissible under the Rules, he ought to have either returned it, or restricted the consideration to the one for grant of NOC. There was no ambiguity as to the understanding of the scope of applications. The respondent issued memo dated 11-11-2003 and informed the petitioner that its application cannot be processed on account of absence of clear proof of ownership of the property. 60 days time was granted to comply with the same. The petitioner submitted registered sale deed for the property, within the stipulated time. On 30-04-2004, another memo was issued by the respondent, to the petitioner, enlisting the objections raised by the Municipal Corporation of Hyderabad. As many as 12 objections were pointed out. While some of them relate to the grant of NOC, others relate to the grant of permission to construct the cinema building. The petitioner responded to this letter on
26-05-2004. Thus, the application was processed to a substantial extent.

10. The petitioner commenced the construction of the theatre and it filed the writ petition, when attempts were made by the Municipal Corporation of Hyderabad to stop the construction. The construction is said to have progressed to a considerable extent. The respondent issued the impugned memos, in November and December 2004; requiring the petitioner to submit separate applications under Rules 8-A and 9-A, afresh. Strictly speaking, the stand taken by the respondent accords with the scheme of the Rules. Such a step, however, ought to have been taken, when the

petitioner submitted its application on 31-10-2003. The common application filed in Form-A-I was processed. It is possible for the respondent to contend that the steps taken by the office are mostly those, which relate to an application filed under Rule 8-A, for grant of NOC, and no steps, as such, were taken in the direction to grant permission for construction of the building under Rule 9-A. Even then, the steps taken so far, cannot be ignored, at least, in the limited context of grant of NOC.

11. Rule 8-B prescribes a time frame, for consideration of the applications for grant of NOC. An important objection raised by the respondent, as to ownership of the land, was complied with by the petitioner. The respondent did not inform the petitioner that there is any non-compliance with the other aspects of the matter, stipulated under Rule 8-B. The matter was overdue, for the consideration of the grant of NOC. At this stage, the petitioner cannot be required to submit the application for NOC, afresh.

12. The petitioner proceeded to construct the building even before any specific permission was accorded. The conferment of powers exclusively upon the Commissioner became handy, for the petitioner to scuttle the efforts by the Municipal Corporation of Hyderabad, to stop the construction. The net result is that the structure has come into existence and demolition of the same, at this stage, would result in waste of valuable resources, unless it becomes inevitable.

13. A Full Bench of this Court in ***3 ACES v. Municipal Corporation of Hyderabad***[1], laid down the guidelines that need to be followed whenever constructions are found to have been made without proper permission. They read as under:

1. In cases where applications have been duly filed in accordance with law, after fulfilling all requirements, seeking permission to construct buildings and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the construction are not in public interest or cause public nuisance or hazardous or dangerous to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.

2. Whatever is stated in guideline number (1) will also equally apply to the permissions deemed to have been granted under Section 437 of the Act.

3. If no application has been filed seeking permission and the construction is made without any permission whatsoever, it is open to the Corporation to demolish and pull down or remove the said unauthorized structure in its discretion. Otherwise, having regard to the facts and circumstances of the case, it will be putting a premium on the unauthorized construction.

When the Corporation comes to the conclusion, keeping the above guidelines in view, that the construction in question is required to be demolished or pulled down, it should follow the procedure indicated below.

i. The demolition should not be resorted to during festival days declared by the State Government as public holidays excluding Sundays. If the festival day declared by the Government as a public holiday falls on a Sunday, on that Sunday also, the Corporation should not resort to demolition.

ii. In any case, there should not be any demolition after sun set and before sun rise.

iii. The Corporation should give notice of demolition as required by the statute fixing the date of demolition. Even on the said date, before actually resorting to the demolition, the Corporation should give reasonable time, depending upon the premises sought to be demolished, for the inmates to withdraw from the premises. If within the time given the inmates do not withdraw, the Corporation may proceed with actual demolition. These guidelines are laid down in view of the fact that the Corporation is a public authority and its action must be tested on the touchstone of fairness and reasonableness.

14. These guidelines equally apply to the buildings covered by the provisions of the Act and Rules. Instead of totally ignoring the building, that has come into existence, the respondent can very well consider the applications for grant of NOC under Rule 8-A, and thereafter examine as to whether the building, which is said to have come up, accords with the provisions of the Rules, and take appropriate decision in this regard.

15. Hence, the writ petition is allowed, with the following directions:

a. The memos dated 25-11-2004 and 30-12-2004 are held untenable, and accordingly set aside.

b. The respondent shall pass appropriate orders as regards the grant of No Objection Certificate under Rule 8-A, in favour of the petitioner, on the basis of the application made by it, on 31-10-2003, within a period of four weeks from the date of receipt of a copy of this judgment. If the petitioner is under obligation to comply with any steps, the same shall be communicated to it, within a reasonable time.

c. In case, the respondent issues a No Objection Certificate, on

consideration of the application of the petitioner, he shall also consider the feasibility of granting permission to construct the cinema building, without insisting on, submission of the fresh application. In this regard, it shall be open to the respondent to insist upon the petitioner to comply with such requirements, as are provided for, under the Rules. The building as it stands now, shall also be examined and verified, to arrive at a conclusion as to whether it conforms to the requirement under appendix-I etc. If any additional structures are required to be made, or alterations are to be effected, the respondent shall intimate the same through a written order, duly stipulating the time. The final decision in this regard shall be communicated to the petitioner, within eight weeks from the date of grant of No Objection Certificate, if any, as a consequence of the exercise indicated in the preceding paragraph.

d. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.17–03—2005.

Note:

L.R. copy to be marked.

(B/O)

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To

One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy

(For his Lordship's kind perusal)

1. The Commissioner of Police, Hyderabad City, Hyderabad.

2. 2 CCs to G.P. for Home, High Court of A.P.,

High Court Buildings, Hyderabad (OUT).

3. 2 CD copies.

4. The Under Secretary, Union of India, Ministry of Law, Justice &

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